

On February 1, 1938, the Robertson Produce Co., having consented to the entry of decrees, judgments of condemnation were entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

28939. Misbranding of olive oil. U. S. v. 125 Cans of Alleged Olive Oil. Default decree ordering product delivered to charitable institutions. (F. & D. No. 41326. Sample No. 302-C.)

This product was represented to be pure imported olive oil, whereas it consisted in part of cottonseed oil artificially colored and flavored.

On January 5, 1938, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 125 cans of olive oil at New Haven, Conn., alleging that the article had been shipped in interstate commerce on or about December 8, 1937, from Brooklyn, N. Y., by Joe Cardo, and charging misbranding in violation of the Food and Drugs Act.

The article was alleged to be misbranded in that the following statements and device were false and misleading and tended to deceive and mislead the purchaser when applied to an article which consisted in part of cottonseed oil: "Imported Product Pure Olive Oil Gioiosa * * * [design of olive tree branches bearing olives] * * * Prodotto Importato Olio D'Oлива Puro Marca Gioiosa * * * Olio D'oliva puro garantito sotto qualsiasi analisi chimica. We guarantee this olive oil to be absolutely pure under chemical analysis. * * * Imported Pure Olive Oil."

The article was alleged to be misbranded further in that it was an imitation of and was offered for sale under the distinctive name of another article, olive oil.

On May 11, 1938, no claimant having appeared, the product was ordered delivered to charitable institutions.

M. L. WILSON, *Acting Secretary of Agriculture.*

28940. Misbranding of canned tomatoes. U. S. v. 150 Cases of Canned Tomatoes. Default decree of condemnation and destruction. (F. & D. No. 41497. Sample No. 48097-C.)

This product was substandard because the fruit was not normally colored and contained excessive peel, and it was not labeled to indicate that it was substandard.

On January 21, 1938, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 150 cases of canned tomatoes at Baltimore, Md., alleging that the article had been shipped in interstate commerce on or about September 16, 1937, by R. E. Dobyns from Monaskon, Va., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Green Vale Brand Hand Packed Tomatoes * * * Packed by R. E. Dobyns, Monaskon, Va."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since it was not normally colored and the average amount of peel per pound of net contents exceeded 1 square inch and the package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On March 4, 1938, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

28941. Alleged misbranding of bread. U. S. v. Shervill R. Sharp (Surebest Bakers). Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 39749. Sample No. 30750-C.)

On August 24, 1937, the United States attorney for the Western District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Shervill R. Sharp, trading as Surebest Bakers at El Paso, Tex., alleging shipment by said defendant in violation of the Food and Drugs Act as amended, on or about February 26, 1937, from the State of Texas into the State of New Mexico of quantities of bread that was alleged to be misbranded. The article was labeled in part: "Surebest * * * Bread Weight 1 Pound * * * Surebest Bakers"; or "Surebest * * * White Bread * * * Wt. 1 Lb. Sunlight Bakery Corp. El Paso, Texas."

It was alleged to be misbranded in that the statements "Weight 1 Pound" and "Wt. 1 Lb." were false and misleading and were borne on the packages so as to deceive and mislead the purchaser since they represented that each of the packages contained 1 pound weight of the article, whereas each of the packages did not contain 1 pound weight of the article but contained a less amount. The article was alleged to be misbranded further in that it was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On October 14, 1937, the case came on for trial before the court and a jury and at the conclusion of the trial, the court directed the jury to return a verdict of not guilty.

M. L. WILSON, *Acting Secretary of Agriculture.*

28942. Adulteration and misbranding of egg noodles. U. S. v. 286 Boxes of Noodles. Default decree of condemnation. Product delivered to charitable organizations. (F. & D. No. 41377. Sample No. 1241-D.)

This product was deficient in egg solids and contained added yellow coal-tar color.

On February 1, 1938, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 286 boxes of noodles at Washington, D. C., alleging that the article had been shipped in interstate commerce on or about January 6, 1938, by the Blue Ribbon Noodle Co., Inc., from Wilkes-Barre, Pa., and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Blue Ribbon Pure Egg Noodles * * * Blue Ribbon Noodle Co., Inc., Wilkes-Barre, Pa."

It was alleged to be adulterated in that a product deficient in egg solids and containing added yellow coal-tar color had been substituted in whole or in part for pure egg noodles, which it purported to be; and in that it was colored in a manner whereby inferiority was concealed.

Misbranding was alleged in that the statement "Pure Egg Noodles" was false and misleading and tended to deceive and mislead the purchaser when applied to an article deficient in eggs and containing added yellow coal-tar color.

On March 18, 1938, no claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to charitable organizations.

M. L. WILSON, *Acting Secretary of Agriculture.*

28943. Adulteration and misbranding of ketchup. U. S. v. Alvin A. Baumer (Baumer Food Products Co.). Tried to the court. Judgment of guilty. Sentence suspended and defendant placed on probation for 1 year. (F. & D. No. 39495. Sample No. 21622-C.)

This product was labeled to indicate that it was tomato ketchup; whereas it consisted in part of apple pulp and was artificially colored.

On March 28, 1938, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Alvin A. Baumer, trading as Baumer Food Products Co., at New Orleans, La., alleging shipment by said defendant in violation of the Food and Drugs Act on or about January 15, 1937, from the State of Louisiana into the State of Mississippi of a quantity of ketchup which was adulterated and misbranded. The article was labeled in part: "Baumer's Crystal Brand * * * Ketchup * * * Baumer Food Products Co., New Orleans, La."

It was alleged to be adulterated in that a mixture of tomato pulp, apple pulp, vinegar, salt, and spices, artificially colored, had been substituted for ketchup, which it purported to be.

Misbranding was alleged in that the statement "Ketchup," borne on the bottle label, was false and misleading in that it represented that the article was tomato ketchup; whereas it was not tomato ketchup, but was a mixture of tomato pulp, apple pulp, vinegar, salt, and spices artificially colored in a manner to simulate tomato ketchup. It was alleged to be misbranded further in that the bottles bore designs and devices which were false and misleading, namely, a device consisting of a container of a shape characteristic of containers used for tomato ketchup, including a screw cap closure over a crimp cap, also characteristic of tomato ketchup bottles, and the design of an elliptical red background to the word "Ketchup" on the main label simulating in general appearance the design of a tomato often appearing on labels for tomato ketchup, representing the article to be tomato ketchup; whereas it was not.